UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA,
Appellee

v.

EDDIE RAY KAHN

Eddie Ray: Kahn
Third Party Detainee

App. No. 10-3088

Cr. No. 1:08-cr-271-RCL-1

NOTE: This is not a Code Pleading.

APPEAL

This is an at law Pleading.

4-LD

Comes now Eddie Ray: Kahn, Third Party Detainee, Defendant in Error. My political status: I am an American National. I am appearing personally, not pro se, as I do not have Counsel or an attorney. I am filing this Appeal pursuant to Section 35 of the Judiciary Act of 1789, which states in pertinent part: "And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorney at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein".

I am also invoking Section 32 of the Judiciary Act of 1789, which states in pertinent part: "And be it further enacted, That no summons, writ, declaration, return, process, judgment, or other proceedings in civil causes in any of the courts of the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according to the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever,".

I am filing this Action personally out of necessity, as I was not able to hire competent counsel nor could I find a licensed attorney to assist me.

As this is not a U.S. Code pleading, I will not be using any law other than the Supreme law of the land, the Constitution of the United States of America (CUSA) and Acts of Congress to support my allegations of false charges, false arrest, improper trial and conviction as well as illegal sentence and false imprisonment.

I. JURISDICTIONAL STATEMENT

1. I am aware that Congress has created two different types of courts:

2. Article I courts are "legislative" courts, and have no Article III "judicial power". They are strictly administrative in nature.

3. Article III courts are "judicial" courts. They have Article III power, and can hear all cases in Law and Equity. They were created pursuant to Section 3 of the Judiciary Act of 1789.

4. I am also aware that Congress has created two different types of judges:

5. Article III judge: His office is created pursuant to Article III, section 2 of the Constitution of the United States of America (CUSA) and Sections 3 & 8 of the Judiciary Act of 1789. Article III judges take the Oath of Office found in Section 8 of the Judiciary Act of 1789, which states:

> "I, A.B., do solemnly swear or affirm, that I will administerjustice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all duties incumbent on me as, according to the best of my abilities and understanding, agreeably to the constitution, and the laws of the United States, so help me God."

These judges are appointed for life and their compensation cannot be diminished (i.e., taxed) while they are in office (See Williams v. U.S., 77 L. Ed 1372 (1933).

6. Article I judges: Employees of the Executive branch of government are appointed as judges pursuant to Article IV, section 3 of the CUSA for Article I courts. However, they have no judicial power to hear common law pleadings. Their Oath of Office is found at 28 USC 453. It is a different Oath than that taken by Article III judges. They also sign a Standard Form 61 Appointment Affidavit and take the Oaths subscribed on it (SF 61 form). Those Oaths are only applicable to people being appointed to Executive branch positions.

Some of the Article IV, section 3 judges are appointed for life; some are appointed for a specific number of years. However, all of them are required to file personal income tax forms (1040 form) every year and pay taxes on the salary they make. Thus, their salary is diminished while they are in office. They are also required to take the three Oaths that are on the Standard Form 61 Appointment Affidavit that they sign prior to taking office. NOTE: Those Oaths are only taken by people being employed by the Executive branch of government.

7. Conversely, an Article III judge's salary (one whose office was created by section 8 of the Judiciary Act of 1789) cannot be taxed while he is in office as that would be a violation of Article III, section 1 of the CUSA.

8. I am aware that there are two different types of "law" being used in federal courts today, one being "de facto" and one being "de jure".

9. Acts of Congress, which is de jure law. An Act of Congress is passed into law pursuant to the requirements detailed in Article I, section 7, clause 2 of the CUSA. All Acts of Congress, to be valid, must conform to the limitations of government authority delineated in the CUSA.

10. United States Code, which is de facto law. This is a revised and restated version of an Act of Congress. It is created, not by a Congressman, but by a lawyer with the title of "Law Revision Counsel", who works exclusively for the Speaker of the House of Representatives and he serves exclusively at the pleasure of the Speaker.

11. The revised and restated Code sections are not real law because they do not Amend or Repeal the Acts of Congress they were derived from (See 1926 Preface of the U.S. Code books - Ex. A). The revision is done at the behest and under the direction of the Speaker and other unknown (at this time) persons. It does not go through the legislative process required by the CUSA to become de jure law. Neither do the Code sections have to conform to the limitations of government authority delineated in the CUSA as it is simply the Law Revision Cousel's opinion as to how he thinks the Act should read.

II. PARTIES

1. The Defendant in Error, Eddie Ray: Kahn, has been incarcarated in four different jails, the FCI La Tuna in Anthony, Texas and currently being imprisoned in Rivers Correctional Institution in Winton, North Carolina. I have been continuously incarcarated since November 1, 2006. I have been in the custody of the U.S. Department of Justice during the entire time.

2. The UNITED STATES OF AMERICA, the Appellee, is an Improper Party plaintiff, as it is just the name of the collective fifty states and, thus, is not even a fictitious entity.

III. STATEMENT OF FACTS

3. On September 26, 2008, I was taken by the U.S. Marshals Service from FCI La Tuna in Anthony, Texas pursuant to a Writ of Habeas Corpus Ad Prosequendum and transported to the federal Oklahoma City Transfer Center. Four days later, I was further transported to the Washington, D.C. Jail.

4. I arrived at the D.C. Jail on October 1, 2008.

5. At no time was I told why I was being taken to Washington, D.C.

6. On October 1, 2008, I was transported from the jail to the U.S. District Court. There I was fingerprinted by a U.S. Marshal.

7. I asked the Marshal why I was being fingerprinted. The Marshal said that I was going to be a material witness in an upcoming case.

8. The Marshal asked me to sign the fingerprint card. I refused to sign it.

9. On October 15, 2008, I was transported from the jail to the District Court.

10. I was brought to a Holding Cell. A man came in and introduced himself as Pleasant Brodnax, III. I never introduced myself to him nor did I ever identify myself to any Marshall. Mr. Brodnax said that he had been retained by the Court to represent me in an Arraignment that was going to take place in 30 minutes.

11. I told Mr. Brodnax that I never had any Notice from the Appellee of what was going to transpire and was totally unprepared. I also told him that I was not financially eligible for a court appointed attorney, as I had family and friends that would hire a licensed, competent attorney of my choice.

12. He left, but then came back twice more before I went into the courtroom, each time insisting that I let him represent me. I continued to tell him that I did not want or need him because, should it be necessary, I had people that would hire counsel for me.

13. I was forced to go into the courtroom by the Marshals. The Court was already in session. I was told by the Marshals to sit down across from Mr. Brodnax.

14. Judge Kennedy never looked at me or tried to talk to me. However, he did talk with the other four alleged defendants at the table and their attorneys.

15. Judge Kennedy told Mr. Brodnax to get up and plead for me. I objected. I told Judge Kennedy that Mr. Brodnax was not my attorney. Judge Kennedy told me to stop talking. I repeatedly said that Mr. Brodnax was not my attorney.

16. Judge Kennedy had the Marshals forcibly take me from the courtroom and put me in a Holding Cell.

17. Judge Kennedy again told Mr. brodnax to plead for me. Mr. Brodnax told Judge Kennedy that he had not been authorized to speak on my behalf. Despite that admission, Judge Kennedy forced Mr. Brodnax to plead "Not Guilty".

18. I asked Judge Kennedy on the Record to make a legal determination that the defendant, EDDIE RAY KAHN, and I were the same entity. Judge Kennedy refused to do so.

19. Judge Kennedy tried repeatedly, from October 15, 2008 until November, 2009, to get me to identify myself as the defendant on the Record. I refused to do so, as I repeatedly asserted that I was not a defendant in the case and the Plaintiff had never testified under Oath that I was someone who had violated any Act of Congress.

20. Judge Kennedy then forced attorney Brodnax on me as "standby counsel" even though I never had, nor did I ask for, Forma Pauperis status.

21. Judge Royce Lamberth took over the case in november, 2009. He stated on the Record that Judge Kennedy was "too ill" to continue.

22. That was rather hard to believe as other prisoners in my Unit at the D.C. Jail who also had Judge Kennedy as their judge said he continued with their cases during the whole time I was involved with Judge Lamberth.

Judge Lamberth declared a "mistrial", although in reality, he just dismissed the prospective jurors and then continued on with status conferences as though nothing else needed to be done.

24. Judge Lamberth stated, during the first status conference that he presided over, that he had to get me identified, on the Record, as a Defendant. He stated **"I have not located a return to the writ, so either I will locate the return on the writ or I'll have the deputy who executed the writ at a hearing at which he testifies as to the procedure he used to identify that Mr. Kahn in fact is the defendant who was produced pursuant to the writ, and that should satisfy any identification questions that are raised by Mr. Kahn".**

25. That Hearing never happened and the return to the Writ of Habeas Corpus Ad Prosequendum was never produced. Obviously, the positive identification that, according to Judge Lamberth, was vital to give the Court personam jurisdiction over my body never happened, making the entire case against EDDIE RAY KAHN void as a matter of law.

26. I repeatedly asked Judge Lamberth to order the prosecuting attorneys to give me a copy of their Appointment Affidavits so that I could verify that they were employed by the Judicial branch of government pursuant to Section 35 of the Judiciary Act of 1789. He refused.

27. I asked Judge Lamberth for a copy of his Appointment Affidavit, as well as that of the Clerk of Court and the Marshals so I could verify that they were Judicial officers pursuant to Sec. 7 and 27 of the Judiciary Act. He refused.

I explained to Judge Lamberth that, since there are two different federal court systems in America today, that I must verify which one this is, as only the one that was created by the Judiciary Act of 1789 is authorized by Congress to rule on a violation of an Act of Congress. I told him I did not want to be subject to the "de facto officer doctrine" as the U.S. Supreme Court warned all Americans of the danger of not timely verifying a government officer's status in Federal Crop Ins. Co. v. Merrill, 332 US 380.

In fact, Judge Lamberth's stock answer to every question that I raised or every request that I made was "Take it up with the Appeals Court", even though I had never even been to trial. His attitude made it very clear that he considered me to be a defendent and he had predetermined that I was guilty. Based on his actions and attitude, no one would consider this man to be a fair and impartial judge.

IV. LACK OF STANDING

1. The UNITED STATES OF AMERICA lacked standing to bring this Action in federal court, as there are three essential elements to the Standing doctrine that must be proven before the court can aquire jurisdiction. The elements are:

a. The Plaintiff must prove actual injury.
b. The Plaintiff must prove the Defendant injured him.
c. The Plaintiff must prove the requested relief is appropriate for the injury that was sustained.

2. The U.S. Supreme Court has addressed and ruled on this issue over 200 times. In all of those cases, the justices have stated that, for the court to have jurisdiction to hear the matter, the three aforementioned elements must be proven. Without each element being proven by the Plaintiff, the case must be dismissed.

3. In the instant case, the Plaintiff not only did not claim injury, but actually stated on the Record that there was no injury. The Plaintiff never attempted to prove that I was the Defendant, much less prove that I had injured the Plaintiff in any way. And, obviously, since the first two elements were not proven, there could be no appropriate relief.

4. In the U.S. Supreme Court case of Allen v. Wright, 468 US 737, the Court stated "The case-or-controversy doctrines state fundamental limits on federal judicial power in our system of government. The Art. III doctrine that requires a litigant to have "standing" to invoke the power of a federal court is perhaps the most important of these doctrines. "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues". Warth v. Seldin, supra, 422 US at 498".

"The requirement of standing, however, has a core component derived directly from the Constitution. A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." 454 US at 472.. (Underlining added)

I challenged to prosecutors to prove the Plaintiff had "standing" to bring their issues into federal court during the Status Conferences leading up to Trial. However, Judge Lamberth would not require the prosecutors to prove standing, stating it was not necessary for them to have standing.

5. Based on Judge Lamberth's response to my standing challenge, he is:

a. Extremely biased in favor of the prosecution.
b. Or, he doesn't care how the Supreme Court has ruled on this Constitutional issue.

6. I am assuming that the judges hearing this Appeal do care how the Supreme Court has ruled on this issue. If that is the case, since the prosecution did not prove the Plaintiff had standing, even when challenged, the Court never had subject matter jurisdiction. Consequently, on this issue alone, this Court should not only dismiss this case but have it stricken from the Record as it was void ab initio.

V. POSITIVE IDENTIFICATION OF DEFENDANT

1. This document is an "Appeal" of my forced participation in Case No. 08-cr-271 by prosecutors Jeffery McLellan, Tino Lisella and Melissa Suskind and U.S. District Court judges H.H. Kennedy, Jr. and Royce Lamberth.

2. I do not know how to "appeal" this alleged "conviction", when I have always stated, from the first Hearing (Arraignment) until now, that I am not a "defendant" in this case. Amazingly, the Plaintiff never tried to positively identify me as being a defendant in the instant case, even though Judge Lamberth admitted on the Record that it was essential to the Court acquiring personam jurisdiction. (Ex. Q)

3. Additionally, the Plaintiff never stated that I had violated any Act of Congress, never stated that I had committed an "offense", and never stated that I had harmed the Plaintiff in any way, which was absolutely essential, according to numerous U.S. Supreme Court cases that I have read, as proving personal injury is a requirement to prove Standing, without which you cannot bring an Action in federal court.

4. The "merits" of the case are irrelevant as I have always maintained that I was not identified as a defendant in the case by the Plaintiff; I have always stated that I was not a defendant, so this is really a case of Improper Party Defendant, or Defendant in Error.

5. To clear up the confusion early on, I asked Judge Kennedy at the first Status Conference to make a judicial determination that the defendant and I were the same entity. His reply was: **"I am not going to answer that question or any other questions like that"** (See Nov., 2008 transcript).

6. Judge Lamberth would never make that judicial determination, either. Both judges just wanted to assume that I was a defendant, despite my protests to the contrary, and continue on.

7. The prosecuting attorneys never had the Plaintiff positively identify me as a defendant, even with both judges unable to make a judicial determination on the matter. Without that positive identification by the Plaintiff, the Court never had personam jurisdiction and the case was void from it's inception.

8. Judge Lamberth did say, on the Record, that since I had challenged the assumption that I was the defendant EDDIE RAY KAHN, that he would have to get a positive identification from the U.S. Marshal who had executed the Writ of Habeas Corpus Ad Prosequendum that was used to force me to come into the Court and participate. He stated that he would hold a Hearing on the matter. He never did it. (1-13-10 Status Conf. Transcript - pages 3 & 4).

9. Since there was never a rebuttal to my assertion that I was not a defenant in the case by the Plaintiff, the judge could not lawfully assume I was a defendant.

10. Since the Plaintiff never offered any proof to rebut my assertion that I was not a defendant in the case, the judge could not lawfully assume I was a defendant and, until such proof was provided to the judge, he was without personam jurisdiction. Judge Lamberth proceeded on totally without lawful authority, violating my Right to due process of law and violating his Oath of Office to uphold the Constitution of the United States of America, since his job is to protect my Rights which are enumerated in that Constitution and he refused to do so.

VI. NO SUBJECT MATTER JURISDICTION

1. I allege, and the judge and prosecutors all agreed, on the Record, that I was never charged with violating any Act of Congress . I am, therefore, as a matter of law, illegally imprisoned as the Indictment was invalid on it's face and in violation of the Non Detention Act of 1971. As a consequence, the U.S. District Court never had jurisdiction to hear the prosecutor's allegations. (T-1-13-10-p.10)

2. Absent an allegation by the prosecutors of a violation of an Act of Congress, the Court never had subject matter jurisdiction.

3. Additionally, because the UNITED STATES OF AMERICA never identified me as a man who had harmed it in any way, it never had Standing to bring an Action into federal court.

4. According to the Indictment, I must have committed an "Offense" in order to be indicted. Therefore, the definition of the term "Offense" is essential to determine whether a crime has actually been committed.

5. In reading the Speedy Trial Act definition of the word, it states: **"The term Offense means any criminal offense other than an offense triable by court martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by an Act of Congress" (underlining added).**

6. 6. Based on that definition, EDDIE RAY KAHN would have had to have violated an Act of Congress to have committed an "Offense".

7. However, as stated previously, both the judge and prosecutors admitted, on the Record, that EDDIE RAY KAHN was not charged with violating the Mail Fraud Act or any other Act of Congress. Based on the Status Conference transcript, EDDIE RAY KAHN was falsely charged by the prosecutor and falsely sentenced by the judge.

VII. ACT OF 1801

1. The Act of 1801 (Ex. 8) is entitled **"An act concerning the District of Columbia".**

2. The pertinent section is Sec. 2, which states **"And be it enacted, That all indictments shall run in the name of the United States and conclude, against the peace and government thereof"** (underlining added).

3. Based on the requirements of the Act of 1801, the Indictment used by the Appellee is void on it's face, as the Indictment did not run in the name of the United States, and it did not conclude "against the peace and government thereof", which is a violation of the Act of Congress of 1801 that required that specific wording.

4. I have found no Act of Congress that has amended or repealed the Act of 1801. I do not believe that one exists.

5. I raised this objection in Status Conferences prior to trial and at the Allocution at Sentencing. Judge Lamberth would not force the prosecutors to produce the Act of Congress that amended or repealed the Act of 1801, nor would he make a Judicial Determination on the requirements of Sec. 2. As was his standard refrain on all objections that I raised, he just stated "Take it up with the Appeals Court". So, that is what I am doing.

6. Since the Indictment was not specifically worded as required by law, and listed an **Improper Party Plaintiff** (i.e., UNITED STATES OF AMERICA), the Indictment was void and deprived the Court of subject matter jurisdiction. (T-4-20-10-p.29-30)

IX. PROSECUTORS NOT LAWFULLY AUTHORIZED TO REPRESENT APPELLEE

The attorneys allegedly representing the UNITED STATES OF AMERICA in Case No. 08-cr-271, Jeffery McLellan, Melissa Suskind and Tino Lisella, were not lawfully authorized to do so for several reasons:

a. They are Executive branch employees, as evidenced by McLellan's Standard Form 61 Appointment Affidavit (SF 61), which I got via the Freedom of Information Act/Privacy Act request (Ex. C). (Actually, I was unable to determine if Suskind and Lisella are even Executive branch employees, as the FOIA/PA Unit of the DOJ was unable to locate any SF 61 Forms with their names on them.)

b. According to the Judiciary Act of 1789, only the attorney offices ordained and established by Section 35 of that Act are authorized by law to represent the United States. However, those offices are Judicial branch offices, not Executive branch. Executive branch attorneys are not authorized by law to represent either the United States or the United States of America in either civil or criminal litigation. The Judicial branch attorneys are only authorized to represent the United States in civil or criminal proceedings.

c. The lead attorney, Jeffrey McLellan's SF 61 states that, at best, he is a law clerk, not a prosecuting attorney (Ex. D). Since the FOIA Unit for the DOJ could find no SF 61's for the other two at all, we would have to assume that they are of a lower rank than McLellan. Note: All of them did state on the Record, when asked by Judge Kennedy whether are not they are U.S. Attorneys, that they were not.

d. Conclusion: At best, these three attorneys are Executive branch employees.

e. I have found no Act of Congress that has amended or repealed Section 35 of the Judiciary Act of 1789, which established the requirement that, even to represent the United States, you had to be a Judicial branch officer, and I do not believe such an Act exists.

f. I raised this issue in Status Conferences. I demanded that all U.S. government employees involved in this case give me a copy of their Appointment Affidavits. Judge Lamberth refused to allow it. (T-8-30-10-p. 100)

g. Based on Jeffery McLellan's Appointment Affidavit and the fact that Section 35 has never been amended or repealed, the prosecutors simply had no Constitutional or Congressional authority to represent the Plaintiff. Thus, everything they did, from the Grand Jury proceedings on, was not only void, but fraudulent and committed with malice.

h. In order to remove all doubt as to whether there is an Act of Congress that has authorized the Department of Justice to represent the UNITED STATES OF AMERICA in civil or criminal litigation, I sent a FOIA/PA request to the Department of Justice asking for the document that identified that Act. They refused to identify any such Act, stating it would require "research". (See Ex. E) Here again the maxim of law applies that states: **"Evidence not produced is presumed not to exist"**. Without the authorization of an Act of Congress to represent the UNITED STATES OF AMERICA in case no. 08-cr-271, everything the prosecutors did, from convening a Grand Jury on, was fraudulent in nature and void ab initio.

X. IMPROPER PARTY PLAINTIFF

The Plaintiff was not a proper Plaintiff for the following reasons:

1. According to Bouvier's Law Dictionary (1856), the UNITED STATES OF AMERICA is not an entity. It is only a name. Specifically, it states: **"United States of America - It is the name of the Country".** That being the case, it would have no "standing" to come into federal court alleging a legal claim.

2. To verify that the United States of America is not a legal entity, I submitted a Freedom of Information Act/Privacy Act request (FOIA/PA) to the Executive Office of the U.S. Attorneys. I asked for a copy of any document that authorizes the Department of Justice (DOJ) to represent the UNITED STATES OF AMERICA in criminal or civil litigation. They were not able to produce any such document.

3. Without an Act of Congress that authorized the DOJ to represent the USA, everything the prosecutors did was void ab initio, and actually fraudulent in nature.

4. The Judiciary Act of 1789, specifically Section 35, created the offices of the attorneys appointed to represent the United States in each federal district. It also created the office of the attorney-general. That person was authorized to represent the United States in the U.S. Supreme Court only.

5. There was an Act of 1870 that created an Executive branch Department called the Department of Justice. It was to be headed by some man or woman with the title of "Attorney General".

6. The "attorney-general" office that was created by section 35 of the Judiciary Act of 1789 and the "Attorney General" office that was created by the Act of 1870 that created the Department of Justice are, obviously, two different offices, as the attorney-general's office was created as a judicial branch office and the Attorney General's office was created as an executive branch office.

7. If it were not so, it would be a violation of the Separation of Powers doctrine, as a judicial office cannot control an executive branch office, or vice versa.

8. The Act of 1870 did not amend or repeal the Judiciary Act of 1789. Consequently, neither the "Attorney General" or the "U.S. Attorneys", being Executive branch officers, have any lawful

authority to represent either the "United States" or the "United States of America" in either Civil or Criminal court proceedings.

XI. IMPROPER PARTY DEFENDANT

1. Judge Kennedy and Judge Lamberth always assumed that I was the defendant EDDIE RAY KAHN, even though I repeatedly denied the allegation (See Ex. 5)

2. The prosecuting attorneys never attempted to positively identify me as EDDIE RAY KAHN.

3. I asked Judge Kennedy to make a Judicial Determination on the Record that EDDIE RAY KAHN and I were the same entity. He refused to do so and would give no explaination as to why he would not do so.

4. To clear up the matter, when Judge Lamberth took over the case, he stated on the Record that he was going to hold a Hearing on the matter. He said that he would have the Marshal who executed the Writ of Habeas Corpus Ad Prosequendum that brought me to Washington, D.C. to come and testify that I was, indeed, the defendant EDDIE RAY KAHN. (T-1-13-10-p.3-4)

5. Judge Lamberth never had that Hearing.

6. Without a positive identification by the Plaintiff on the Record, under Oath, that I was EDDIE RAY KAHN, the Plaintiff lacked standing to bring an Action in federal court as the Standing Doctrine requires 3 things be proven by the Plaintiff:

a. That the Plaintiff has suffered a personal injury.

b. That the Defendant caused the injury.

c. That the requested relief is appropriate for the alleged injury.

7. Since the Plaintiff never identified me as the Defendant, and never alleged that I had harmed him/her/it in any way, Standing was never proven by the Plaintiff. Therefore, the Plaintiff had no Standing to bring an Action. Consequently, the Court never had subject matter or personam jurisdiction to hear the Plaintiff's allegations.

XII. VIOLATION OF SEPARATION OF POWERS DOCTRINE

The Constitution of the United States of America (CUSA) was established with three branches of government, each with certain powers and authority that the other two did not have. It was set up that way purposely so no one branch could become the "controlling" branch and subjugate the other two.

It was set up that way, ultimately, to protect Americans from an oppressive, dictator type of government.

The Judicial branch of government was set up to be free and independant of the other two so that, when an American had an issue with the Executive branch of the government, that person could reasonably expect to receive a fair Hearing before an impartial Article III judge.

As the U.S. Supreme Court stated in Bond v. U.S., 131 S.Ct. 2355, **"Individuals are protected by the operations of constitutional separation of powers and checks and balances, and they are not disabled from relying on those principals in otherwise justiciable cases and controversies".**

"Constitutional separation of powers principals are intended, in part, to protect each branch of government from incursion by the others, yet the dynamic between and among the branches is not the only object of the Constitutions concern; the structural principals secured by the separation of powers protect the individual as well".

In the instant case, the Separation of Powers doctrine was violated as I was forced, by the U.S. Marshals Service, judges and prosecutors to participate in Case No. 08-cr-271. However, the judges, prosecutors, marshals and Clerk of Court are all Executive branch employees. They are not Judicial branch officers whose offices were created pursuant to the Judiciary Act of 1789, which created the Article III judicial court system.

The fact that the judge, prosecutors, marshals and Clerk of Court were all Executive branch employees and the "criminal" case was actually an Administrative Action was never disclosed on or off the Record.

Under the Freedom of Information Act, I have received copies of a number of District Court judges and prosecutor's Standard Form 61 Appointment Affidavits. The Oaths that are taken on that form are only taken by Executive branch employees entering into the Civil Service, which is why, on the older forms, it states it is a Civil Service Commission.

I objected to being forced to come before an "administrative law judge" (Judge Kennedy and Judge Lamberth) as:

1. They had no Article III "judicial power" to adjudicate a criminal case and sentence anyone.

2. None of the other "court officers" offices were created pursuant to the Judiciary Act of 1789, making it impossible to have a fair and impartial Trial.

As was stated in the Supreme Court case of Glidden Co. v. Zdanok **"If the power exercised is "judicial power" defined in Article III, as was true in the present case, then the standards and procedures must conform to Article III, one of which is an independant judiciary (underlining added).**

I have a copy of Judge David Sentelle, Chief Judge of the D.C. Circuit Court of Appeals Standard Form 61 Appointment Affidavit. It is no different than that of Richard Sippel, an Administrative Law Judge at the FCC. Judge Sippel admits to being an Executive branch employee. (Ex. I + K)

I also have a copy of Jeffery McLellan's SF 61 Appointment Affidavit. He was the lead prosecutor in the instant case. As you can see (See Ex. C), he signed the same form and took the same Oaths as the two aforementioned judges.

According to the SF 61 Form, they are all Executive branch employees, as is Mark S. Determan, the DOJ attorney allegedly representing the Appellee (I have written to Mr. Determan, asking for a copy of his Appointment Affidavit. He has not responded to my request as of this date.).

Conclusion: Unless the Judiciary Act of 1789 has been amended or repealed, specifically Sections 7,8, 27 and 35, the judge, prosecutors, marshals and Clerk of Court are all "de facto officers", not "de jure".

I did not consent to being forced or deceived into dealing with de facto judicial officers and I will only consent to deal with judicial officers whose office was created by the Judiciary Act of 1789, as it is obvious to me at this point that the Executive branch of government has investigated, prosecuted, adjudicated and imprisoned me, which is in violation of the Separation of Powers doctrine and my my Right to due process of law.

XIII. CERTIFICATION OF THE CHARGES AS CONSTITUTIONAL

1. I was denied the opportunity to challenge the constitutionality of the "offenses" by Judge Lamberth even after I invoked the Congressional authority to do so. The authority is found in 62 Stat. 971, an Act of Congress that requires **The Court shall certify such fact to the Attorney General, and shall permit the United States to intervene for Presentation of Evidence in the question of constitutionality.**

2. I noticed the Court on the Record that I demanded the Court to certify such fact pursuant to 62 Stat. 971, as I alleged I was not constitutionally charged with violating an Act of Congress, in that 18 USC 1341 and 18 USC 371 did not amend or repeal the Acts of Congress they were derived from. (T 8-30-10 p.192)

3. Nor did the U.S. Code "offenses" listed above go through the Article I, section 7, clause 2 "enactment requirement" of the CUSA to be an Act of Congress itself.

4. Judge Lamberth denied me due process of law by refusing, on the Record, to certify my challenge to the Attorney General when he has no lawful authority to do so.

5. NOTICE: I am now making the same request of this Court pursuant to F.R.A.P. 44 (a), which states: **"Constitutional Challenge to a Federal Statute - If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.**

6. Judge Lamberth had no dicretion in this matter. As the Court explained in Wallach v. Lieberman, 366 F. 2d 254 **"Even though district court found constitutional question frivolous, it is required practice to give United States Attorney General notice, and leave it to him to decide whether to intervene".**

7. The U.S. Supreme Court has also weighed in on this issue, stating in International Ladies' Garment Wrokers' Union v. Donnelly Garment Co., 304 U.S. 243, "Former section 401 of this title (28) was not limited to cases where an injunction was sought to restrain the enforcement of the Act, but was applicable whenever the constitutionality of an Act of Congress was involved, however the question might arise, and the question might be raised by any party" (underlining added).

8. I am alleging that the "U.S. Code offenses" that EDDIE RAY KAHN was charged on the Indictment with violating are not Acts of Congress, but merely a revision and restatement of Act of Congress. I am alleging the revision is not done by Congress, but rather by an attorney with the title of "Law Revision Counsel", who works exclusively for the Speaker of the House of Representatives.

9. I am alleging that the U.S. Code is copywrited and sold for profit. Acts of Congress cannot be copywrited and sold.

10. I am stating that the 1926 Preface of the U.S. Code states, in pertinent part: "No new law is enacted and no law repealed. It is prima facie the law. It is presumed to be the law. The presumption is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code".

11. I had, in my hands in front of Judge Lamberth, a copy of the Code "offenses" that EDDIE RAY KAHN was alleged to have violated. I also had in my hands the prior unrepealed Acts of Congress the Code "offenses" were derived from. The wording, particularly the punishment sections, were drastically different; The Code penalties being much more severe.

12. I pointed this out to Judge Lamberth. I asked him to examine the documents. He would not even touch them.

13. I asked him to make a judicial determination as to which one was law. He refused to do it, thereby denying me due process of law and harming me greatly by sentencing EDDIE RAY KAHN, who he still presumed that I am, to a much harsher sentence and fine than what the Acts of Congress 18 USC 1341 & 371 were derived from authorized.

14. That is the reason for the challenge.

XIV. 18 USC 1341 & 371 DID NOT AMEND OR REPEAL THE ACTS OF CONGRESS THEY WERE DERIVED FROM

1. The Preface of the U.S. Code books in 1926 state that all U.S. Code sections are simply a revision and restatement of Acts of Congress. It also states that no new law is enacted and no law is repealed by the creation of these "Code" sections; That these Code sections are just the Law Revision Counsel's opinion as to how he thinks the law should read.

2. The Preface also states that the Code is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code.

3. The Acts of Congress that 18 USC 1341 and 371 were derived from by the Law Revision Counsel are very different, particularly the penalty provisions.

4. I objected to Judge Lamberth, on the Record stating that 18 USC 1341 said the maximum prison time per count is 20 years, while the Act it was derived from states the maximum prison time is 10 years. The Code also states that the fine is unlimited, while the Act of Congress it was derived from says the maximum fine is $1,000.00. (T-8-30-10-p.33-36)

5. The same is true for 18 USC 371. That Code section states that the maximum prison time is 5 years and an unlimited fine, while the Act of Congress it was derived from states that the maximum prison time is 2 years and a maximum fine of $10,000.00.

6. Because of the wide variance in the penalty provisions, I asked Judge Lamberth to make a judicial determination as to which one was law.

7. He refused to do so, even after I pointed out to him that only Acts of Congress go through the legislative process required by the Constitution of the United States of America (CUSA) in Article I, section 7, clause 2 to become law and the U.S. Code sections do not go through that process.

8. When I made the objection, I had the unrepealed Acts of Congress that 1341 and 371 were derived from in my hands when I was standing at the podium.

9. I asked Judge Lamberth to examine the documents in question as, by doing so, he would be able to plainly see that there was a great variance between the Code sections and the sections of the Acts of Congress they were derived from.

10. Judge Lamberth refused to do his duty, which includes being a fair and impartial judge. He was acting just like a federal prosecutor, which is what he was before he became a judge. Judging from his actions, I do not believe he thinks there is any difference between the two offices.

11. I had already made Judge Lamberth very aware that the Non Detention Act of 1971 states clearly that **"No citizen can be imprisoned, or otherwise detained, by the United States except pursuant to an Act of Congress".** He chose to ignore the law, making all his actions from that point on invalid and of no lawful effect. By deliberately violating the Non Detention Act, he acted totally outside the scope of the judicial office that was created by Section 8 of the Judiciary Act of 1789 and committed a criminal act against me by sentencing me to prison without me being charged with violating any Act of Congress.

12. Judge Lamberth sentenced EDDIE RAY KAHN to the maximum prison term term possible under 18 USC 1341 (20 years) and the maximum prison term under 18 USC 371 (5 years), both to run concurrently, and a $25,000 fine.

13. However, had he sentenced EDDIE RAY KAHN according to the unrepealed Acts of Congress that those Codes were derived from, the maximum prison time possible would be 10 years and the maximum fine would have been $11,000.

14. As a consequence of Judge Lamberth's totally illegal actions at the Sentencing Hearing, the sentence imposed is invalid and void.

XV. FREEDOM OF INFORMATION ACT/PRIVACY ACT

In order to verify that I had violated no Act of Congress, in 2010 I sent a Freedom of Information Act/Privacy Act request to the Department of Justice asking for the following documents:

A copy of all documents in the possession of the Bureau of Prisons that have my name on them that identify the Act of Congress that I was convicted of violating in Case no. 08-cr-271 and,

All documents with my name on them that identify the Act of Congress that the Bureau of Prisons is using as it's lawful authority to imprison me, as per the Non Detention Act.

On March 29, 2011, Senior Counsel for the Administrative Appeals Staff of the Department of Justice, Anne D. Work, responded to my Appeal of the refusal of the DOJ's FOIA/PA Unit to respond at all to my request (which, of course, is a violation of the Act as they are required to respond within 20 working days).

Ms. Work's reply to the FOIA/PA request: **"Criminal statutes do not require implementing regulations and therefore do not need individual Acts of Congress to be effective".**

Obviously, Ms. Work has never read the Non Detention Act of 1971, which states that no citizen can be imprisoned or even detained except pursuant to an Act of Congress.

It is also obvious that she is under the impression that U.S. Code sections are "statutes". The definition of "statute" in Black's Law Dictionary, 8th Ed. is: **"A law passed by a legislative body".**

The U.S. Code is not created by a legislative body. It is created by an attorney (currently Peter LeFevre) who works exclusively for the Speaker of the House of Representatives (See 2 USC 285). His title is "Law Revision Counsel". Mr. LeFevre simply revises and restates existing Acts of Congress to read as the Speaker and other unknown, at this time, persons would like to see the law really read.

Additionally, I sent the same FOIA/PA request to the BOP. I received a response from Jason Sickler, Regional Counsel for the BOP. What he stated was: **"The BOP does not routinely maintain documents which identify the Act of Congress for which an inmate is convicted or which authorize the BOP to imprison inmates".** (Ex. M)

Neither the DOJ or the BOP could produce any Act of Congress that authorized them to imrison anyone.

Based on those responses, it is very clear that both Ms. Work and Mr. Sickler knew that:

a. The "offenses" listed on the Indictment were not Acts of Congress and,

b. There was no Act of Congress authorizing the DOJ/BOP to imprison anyone.

The fact that the DOJ/BOP is currently imprisoning over 200,000 people and has over 2,000,000 more in their "custody" on Probation, Parole or Supervised Release without any Act of Congress that authorizes them to do so is simply put, a travesty of justice, as they are currently:

a. Investigating crimes through their "bureaus", such as the FBI, DEA, ATF, etc.

b. Then, they prosecute the case.

c. Then, they imprison the convicted man or woman.

d. Then, they continue to have custody of the man or woman for years after the term of imprisonment via the U.S. Parole Commission, which is another bureau of the DOJ.

A careful reading of the Act of 1870 that created the Department of Justice reveals no authority for the DOJ to do anything but prosecute and defend the United States in court and give advise on matters of law to the various Executive branch departments (See copy of the Act - Ex. J).

Based on the aforementioned responses from Ms. Work and Mr. Sickler and the Act of Congress that created the Department of Justice, there is no doubt that the DOJ/BOP are fully aware that they are violating my Rights as an American and are doing it willingly and with mailice aforethought.

XVI. ILLEGAL FORMA PAUPERIS STATUS

1. Judge Kennedy gave me "forma pauperis" status illegally. He did it, not to assist me, but rather to help himself and the prosecuting attorneys. I believe that he was made aware by the prosecutors that they had given me no advance Notice of the Arraignment and, because of that, he would not be able to force me to plead without counsel to assist me.

2. To accomplish what he and the prosecutors wanted, which was a "Not Guilty" plea on the Record that day, he hired an attorney, Pleasant Brodnax III, to represent the defendant, EDDIE RAY KAHN, at the Arraignment. The judge, prosecutors and Mr. Brodnax all made the assumption that I was the defendant.

3. The attorney was hired to represent me without:

a. First confirming that I was a defendant.

b. Asking me if I wanted or needed assistance of counsel.

c. Asking me financial questions to accurately ascertain that I was eligible for a CJA attorney to be appointed to assist me.

4. By not doing any of those things, he violated my Right to due process of law, my Right to counsel of my choice, he violated his Oath of Office to uphold the CUSA and he violated the Criminal Justice Act, which forbids someone from getting an attorney without charge unless he has legitimate forma pauperis status.

5. At no time did Judge Kennedy talk to me or even look at me, much less ask me any financial questions to determine if I qualified for a CJA attorney.

6. I told Mr. Brodnax, when he first introduced himself to me, that I had family and friends that would hire counsel of my choice for me if necessary and, therefore, I was not financially eligible for a CJA attorney.

7. Section 35 of the Judiciary Act of 1789 states that all Americans have a Right to handle their cases personally (See Ex. F). The U.S. Supreme Court affirmed that mandate in it's decision in Faretta v. California, 422 U.S. 806.

8. By forcing Mr. Brodnax on me, the court violated the 6th Amendment of the CUSA and, by doing so, committed Judicial Misconduct, which prohibited further jurisdiction to proceed.

XVII. I WAS DENIED COUNSEL OF MY CHOICE

1. Attorney Pleasant Brodnax, III was forced on me by Judge H.H. Kennedy, Jr. in violation of Section 35 of the Judiciary Act of 1789, which states, in pertinent part: **"That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law..."**.

2. The U.S. Supreme Court has reinterated that Right in numerous cases, such as Powell v. Alabama, Johnson v. Zerbst, U.S. v. Gonzalez-Lopez and Faretta v. California.

3. Attorney Brodnax pled for me without even knowing who I was, as I had never introduced myself to him and no one in the courtroom had ever identified me as a defendant in the case.

4. Additionally, I had told Mr. Brodnax that I did not want him and did not need him as I had family and friends that would be willing to hire licensed, competent counsel of my choice to assist me and, consequently, I was not financially eligible for an attoreny hired by the Court as per the Criminal Justice Act.

5.When Judge Kennedy asked Mr. Brodnax to plead for me, Mr. Brodnax told the judge that he had not been authorized to speak on behalf. The judge forced Mr. Brodnax to plead anyway. (-10-15-08-p.13-14)

6. I never, at any time, told Mr. Brodnax my name, so he never knew my identity. He simply assumed I was a defendant.

7. I asked Mr. Brodnax numerous times, both in person and by letter, for a copy of his license to practice law. He said he had a license **"hanging on a wall in a frame"**. However, he was never able to produce it. (Ex. L)

8. Because he could not produce a copy of his license to practice law, I do not believe he has one. I believe the maxim of law applies that states: **"Evidence not produced is presumed not to exist"**.

9.Practicing law without a license, Mr. Brodnax was in Criminal Contempt of Court and everything he did was of no legal effect.

10. I filed a formal Complaint with Judge Lamberth against Mr. Brodnax, alleging that he had committed Fraud on me and Fraud on the Court by holding himself out to be a licensed attorney.

11. I recently sent a letter to Judge Lamberth asking for an update on his investigation into my Complaint (See Ex. G). He has not responded to my request, leading me to believe that he did not do his sworn duty to protect me and my Rights pursuant to the Constitution of the United States of America to investigate my Complaint.

12. The American Bar Association (ABA) warns all Americans on it's website to make sure, before you hire a lawyer, that he is licensed to practice law.

13. Since Mr. Brodnax forced himself on me at the Arraignment, I had no choice but to try and confirm that he was a licensed attorney after the fact, and, as it turned out, he was not licensed, similar to the man in the Washington Post article (Ex. H).

14. Judge Kennedy violated the Criminal Justice Act by hiring an attorney to represent me without first having me swear, under penalty of perjury, that I was financially unable to hire an attorney.

15. Both Judges Kennedy and Lamberth violated the False Claims Act by billing the federal government to pay attorney fees to Mr. Brodnax when I had told Mr. Brodnax, Judge Kennedy and Judge Lamberth that I had family and friends that would pay for a licensed, competent attorney of my choice.

16. I believe that both judges were doubly culpable because of the fact that I told both of them numerous times that I was not financially eligible for a free court appointed attorney, yet, even with that knowledge, they still continued to force Mr. Brodnax on me as "Standby Counsel" and they continued to pay him knowing that I was not financially eligible for one under the Criminal Justice Act.

17. Both judges are also guilty of not doing proper due diligence to make sure Mr. Brodnax was licensed to practice law in Washington, D.C.

The 1926 Preface of the U.S. Code books explain very clearly what the "Code" really is:

"This Code is the official restatement in convenient form of the general and permanent laws of the United States in force December 7, 1925. No new law is enacted and no law repealed. It is prima facie the law. It is presumed to be the law. The presumption is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code (underlining added).

Since the U.S. Code, by it's own admission, is not an Act of Congress and does not repeal any Act of Congress, the "Offenses" listed on the Indictment are non existant offenses making the Indictment void as a matter of law.

XVIII. NO INVESTIGATIVE/POLICE POWERS

The Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS) investigated and arrested me in regards to the alleged charges. The FBI is a Bureau of the Department of Justice. The IRS is a Bureau of the Department of the Treasury.

In reading the Act of Congress that created the Department of the Treasury in 1789, there is no section that gives the Department of the Treasury the police powers of investigation of crimes and the power to arrest people.

I have found no Act of Congress that has amended that Act to give the Department of the Treasury those powers, nor do I believe any such Act exists.

Absent the production of an Act of Congress by the UNITED STATES OF AMERICA that amended the Act of 1789, the IRS had no Congressional authority to investigate my actions and no authority to arrest me, as IRS/CID agents Lalli and Graf did at the Miami international Airport on November 1, 2006.

The agents testified at the trial regarding the findings of their investigation. They also confiscated documents relating to their investigation and gave it to the prosecutors, who used them at trial.

The FBI also investigated my actions in regards to Case No. 08-cr-271. An FBI agent "arrested" me in Panama City, Panama on November 1, 2006 and forced me to go with him on an airline flight to Miami, Florida. This was done against my will as he had no arrest warrant. This agent testified against EDDIE RAY KAHN as well.

In reading the Act of Congress that created the Department of Justice in 1870 (Ex. J), I discovered that there is no section of that Act that authorizes the Department of Justice to have and exercise any police powers of investigation and arrest.

I have not found any Act of Congress enacted since that date that has amended the original Act to give the DOJ that additional authority, nor do I believe that any such Act exists.

Absent the production of an Act of Congress amending the Act of 1870 to give the Department police powers, the FBI had no Congressional authority to investigate my actions and no lawful authority to arrest me. Therefore, everything the FBI did was not only null and void ab initio, but the Bureau committed a Fraud on me and a Fraud on the Court.

For the same reasons, the IRS actions in this matter are null and void ab initio. Their agents actions were also fraudulent. (Ex. R)

Since there was no other government employee's testimony other than IRS and FBI personnel and they produced all the alleged "evidence", the prosecutors simply had no valid evidence or testimony with which to prosecute.

As there was no valid evidence or testimony presented by the prosecutors, and the Indictment was invalid the Court never had subject matter jurisdiction.

Just to make sure there were no Acts of Congress giving the DOJ and the Department of Treasury these additional "police powers", I did a FOIA/PA request to both the FBI and the IRS, asking for the document that identifed the Act of Congress that gave them "police powers" of arrest and investigation.

Neither Bureau could produce a copy of any such document.

XIX. FINANCIAL CONFLICT OF INTEREST

Since I have established, with affidavits and evidence, that the judges, prosecutors, marshals and Clerk of Court, not to mention the FBI and IRS agents that investigated the case and testified at the Grand Jury Hearing and at Trial, are all Executive branch employees, I am now alleging that all of them were eligible for **"cash awards"** if they could gain a conviction in the instant case. In other words, they all had a financial conflict of interest.

Why am I making that allegation? Because, in reading 5 USC sections 4501 et. seq., it discusses the "cash awards program" that all Executive branch employees are eligible for. It seems that all civil servants can receive up to $25,000 for **"superior accomplishment, or other meritorious effort".** What does that mean? Evidently, anything the superior who handles the program believes to be "superior" or "meritorious".

Obviously, if you are a judge, prosecutor, marshal, Clerk of Court or an FBI or IRS agent involved in prosecuting a criminal case, you will only be deemed "superior" by the head of the Agency and the President if you get a conviction. Otherwise, you failed to do your job.

In reading 5 USC 4504, we find that not only are these civil servants eligible for the "Agency cash award" but, simultaneously, they are also eligible for a cash award from the President of a similar amount. So, they are not just eligible for $25,000, but they are really eligible for $50,000! (Ex. P)

As it states in 5 USC 4505(b)(1) **"A cash award under this program shall be paid as a lump sum, and may not be considered to be part of the basic pay of an employee".**

In reading further about the program, I find that, since 2004, 500 million dollars a year has been allocated for these awards.

When all of these civil "servants" are looking at you and thinking to themselves "This is a high profile case. I am eligible for up to $50,000 in cash if we can put this man in prison", there is simply no way I could have received a fair trial, even if I was actually a defendant.

Conclusion: Since the "cash" awards are not required to be declared as "income" on the civil servant's 1040 tax form, I believe this program is nothing more than a thinly veiled attempt to bribe the employees into giving up their integrity.

Should the Appellee deny that the aforementioned persons were eligible for the cash awards, I would require an affidavit to that effect.

Problem: Based on the fact that the Chief Judge of the D.C. Court of Appeals, Judge David Sentelle, has a Civil Service Commission, I have to assume that the three judges assigned to hear this Appeal have also taken Civil Service Commissions. That being the case, the judges would also be eligible for up to $50,000 each in cash awards if they deny this Appeal and keep me illegally imprisoned.

If the judges hearing this Appeal deny that they are eligible for the cash awards, I am asking for affidavits to that effect. I am also asking for, pursuant to the Ethics in Government Act, their complete, Comprehensive Financial Statement for the years 2010, 2011 and 2012. I am also asking for a copy of the document that states they are not eligible for the award.

Unless the attorney (who is also eligible for the cash awards) for the Appellee can rebut my allegation, with evidence, that the judges, prosecutors, marshals, Clerk of Court, IRS and FBI agents that participated in the prosecution of the instant case were eligible for the cash awards, I demand that the case be remanded back to the district court with instructions to dismiss the case and strike it from the Record.

XX. CONCLUSION

The summary of the whole matter boils down to this:

1. I have always maintained that I was not the defendent in this case. The Plaintiff never attempted to positively identify me as a defendent. Judge Lamberth stated on the Record that he would get the Marshal who executed the Writ of Habeas Corpus Ad Prosequendum to come to a hearing and explain how he identified me as a defendent. He never did it. I never identified myself to Judge Kennedy or Judge Lamberth. Both judges continued to assume and presume that I was the defendent. They always called me by the defendents name over my repeated objections.

As I was never positively identified as a defendent by the Plaintiff and I always objected when referred to as a defendent, the Court never had Personam jurisdiction. Consequently, the Trial, Judgement and Sentencing was void for lack of Personam jurisdiction.

2. According to the Standard Form 61 Appointment Affidavits that both Judge Kennedy and Judge Lamberth signed, they are both Executive branch officers. The Oaths they took which are on the Appointment Affidavits are the same ones that all Civil Servants take, including Administrative Law judges (See Ex. I). Their office was not created by Section 8 of the Judiciary Act of 1789, which actually brought into being the Article III court system.

As Executive branch officers, they have no "judicial power", as that power is reserved for Judicial branch officers.

Both Judge Kennedy and Judge Lamberth usurped the judicial branch officers judicial power to hold a criminal trial, and sentence someone to prison, making them guilty of treason to the Constitution.

3. According to the Standard Form 61 Appointment Affidavit of the lead prosecutor, Jeffery McLellan, the prosecutors are also Executive branch employees. Consequently, their office was not ordained and established by Section 35 of the Judiciary Act of 1789, which established Judicial branch counsel to represent the

United States in Civil and Criminal litigation.

Since Section 35 has not been amended or repealed, only the attorney whose office was established by that Section is authorized to represent the United States in court litigation. Note: There is no Act of Congress that has authorized either a Judicial branch attorney or an Executive branch attorney to represent the UNITED STATES OF AMERICA.

As there is no Act of Congress that authorizes Executive branch attorneys to represent the UNITED STATES OF AMERICA, those attorneys committed Fraud on the Grand Jury, Fraud on the Court and Fraud on me by representing the United States of America without constitutional or congressional authority.

4. Judge Kennedy violated the Criminal Justice Act by giving me "Forma Pauperis" status and hiring an attorney to represent me without asking me if I wanted or needed an attorney, or asking me any financial questions to determine if I qualified for a free, court appointed counsel. He hired an attorney without my knowldge or consent to be in court to "represent" me because he knew he could not force me to plead when I had no prior Notice of the Arraignment Hearing and had no opportunity to prepare or hire Counsel of my choice.

This was a clear violation of Section 35 of the Judiciary Act of 1789, which states in pertinent part: **"And it be further enacted, That in all courts of the United States, the parties may plead and manage their own causes or by assistance of such counsel or attorneys at law as by the rules of said courts respectively shall be permitted to manage and conduct causes therein."**

By forcing an attorney on me, the Court lost subject matter jurisdiction and everything that happened after that was void ab initio.

Additionally, both Judge Kennedy and Judge Lamberth committed Fraud on me by Judge Kennedyś actions, as Judge Lamberth just continued on and supported Judge Kennedyś illegal

act, as he continued to force attorney Brodnax on me as "standby counsel" despite my protests.

5. Even if I was the defendent, this Court lacked subject matter jurisdiction as the Indictment was invalid for the following:

a. The Act of 1801 required that all Indictments in the District of Columbia must run in the name of the United States and conclude "against the peace and government thereof". That Act has never been amended or repealed. The Indictment in the instant case did not run in the name of the UNITED STATES and did not conclude "against the peace and government thereof", thus making the Indictment void on its face.

b. The Indictment did not state that a particular Act of Congress had been violated. Therefore, there was no valid "Offense" listed on the Indictment, as the term "Offense" is defined as a criminal violation of an Act of Congress.

I specifically asked Judge Lamberth and the prosecutors on the Record if the Defendent had been charged with violating the Mail Fraud Act. The answer from both was no, the defendent was not being charged with violating an Act of Congress.

The fact that the defendent was not being charged with violating an Act of Congress also violated the Non Detention Act, which states: **"No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress".**

As has been stated in U.S. Supreme Court cases, "In the absence of an Act of Congress, there can be no crime against the United States" (much less the UNITED STATES OF AMERICA).

6. Both the FBI and IRS agents that investigated the case, gathered evidence and testified at trial simply had no Congressional authority, via an Act of Congress, to do so. The Acts of Congress that created the Department of Justice and the Department of the Treasury, of which the FBI and the IRS are Bureaus, respectively, were never granted the "police powers" of investigation of crimes and arrest authority.

That being the case, all the evidence and testimony that was presented by the agents was not only inadmissible, but was obtained by Fraud, making what they did a crime in itself.

7. I was denied the right to challenge the charges as constitutional pursuant to the Act of Congress cited at 62 Stat 971. Judge Lamberth denied my request on the Record even though he has no Congressional authority to do so. The Act states that, **"The Court shall certify to the Attorney General, and shall permit the United States to intervene for presentation of evidence in the question of constitutionality".** That is a blatant violation of the due process of law.

8. The UNITED STATES OF AMERICA is an Improper plaintiff as, according to Bouvierś Law Dictionary (1856), it is nothing more that the name of the country. As was stated earlier, the the proper party would have been the United States, pursuant to the requirement of the Act of 1801. However, the United States never made an appearance in this case.

9. The Separation of Powers doctrine was violated as the Executive branch employees involved in this case usurped the "judicial power" reserved by the Judiciary Act of 1789 only for the offices created by that Act.

10. All the Executive branch employees involved in the instant case were eligible for "cash" awards if they could get a conviction. Therefore, they all had an undisclosed financial conflict of interest, making them unable to be unbiased, fair and impartial. In fact, the cash (i.e. bribe) does just the opposite. It makes them very biased, rendering them all unfit to participate in the trial.

REQUESTED RELIEF

For all the foregoing reasons, the whole process, from the Arraignment to the Sentencing, was a complete Fraud and a Sham.

For all those same reasons, I am asking that you right the wrongs that have been done to me and order my immediate release in the interest of justice.

Eddie Ray Kahn
P.O. Box 630
Winton, North Carolina